


GOVERNANCE POLICIES  ROADS OPENING AND CLOSING	Policy Number:	GP-24
	Version Number:	1.0

POLICY STATEMENT:

The City of Marion will open or close roads to facilitate the achievement of Council's strategic outcomes. The procedures will be undertaken in a fair, equitable and transparent manner.

The Opening or Closure of Roads will be regulated and documented in accordance with the Roads (Opening and Closing) Act 1991.

Section 12 of the Roads (Opening and Closing) Act 1991 ("the Act") allows Council to make "in principle" agreements for the exchange and transfer of land subject to a proposed road closure with the owners of land adjoining that land.

Council may not make an "in principle" agreement for the exchange of land unless Council first invites offers from the owners of land adjoining the land subject to the proposed road closure.

DEFINITIONS:

Agreement for exchange - means an agreement between a council and another person for the exchange of land subject to a proposed road opening for land subject to a proposed road closure under which the land subject to the proposed road closure-

- (a) is to be transferred to that other person in fee simple; or
- (b) is to be added to land held by that other person under a Crown lease or agreement to purchase, whether or not an amount is agreed to be paid for equality of exchange;

Agreement for transfer - means an agreement (other than an agreement for exchange) between a council and another person under which land subject to a proposed road closure-

- (a) is to be transferred to that other person in fee simple; or
- (b) is to be added to land held by that other person under a Crown lease or agreement to purchase, whether or not an amount is agreed to be paid in consideration of such transfer or other dealing;

Certificate of Title - shall mean a Certificate of Title issued under any of the Real Property Acts, or any grant from the Crown issued after the passing of the [Real Property Act](#) No. 15 of 1857-58 and before the commencement of the *Real Property (Witnessing and Land Grants) Amendment Act 1995*, and shall extend to and include all plans and entries thereon;

Discontinuation of the Road Process - means that

- (1) The road process is discontinued in respect of land if-
 - (a) the relevant authority determines that no road process order is to be made; or
 - (b) a road process order is made by the relevant authority but does not deal with the land; or
 - (c) a road process order is made by the relevant authority dealing with the land but the road process lapses by virtue of section 20(2) of The Roads Act 1991 or the Minister declines to confirm the order.

Person affected - in relation to a road process or proposed road process, means-

- (a) a person who has an interest in land subject to the road process or proposed road process; and

- (b) a person who has an interest-
 - (i) in land adjoining land subject to the road process or proposed road process; or
 - (ii) where the process relates to less than the full width of a road or proposed road-in land adjoining the opposite side of the road or proposed road; and
- (c) a prescribed public utility; and
- (d) in relation to land of a prescribed class-a public authority (other than a prescribed public utility) prescribed in relation to land of that class; and
- (e) any other person who would be substantially affected by the process;

Relevant Authority - in relation to a road process or proposed road process, means-

- (a) where the road process is part of or directly associated with a development or proposed development under the [Development Act 1993](#) that requires development approval from the Development Assessment Commission or the Governor-the Development Assessment Commission; or
- (b) where the road process is part of or directly associated with a development or proposed development under the [Development Act 1993](#) that requires development approval from the Minister for the time being administering the [Development Act 1993](#)-that Minister; or
- (c) in any other case-the council;

Road - means-

- (a) a public road within the meaning of section 4 of the *Local Government Act 1999*; or
- (ab) an alley, laneway, walkway or other similar thoroughfare vested in a council; or
- (b) in relation to a part of the State not within a council area-
 - (i) a road or street delineated and shown on a public map or plan of the State as laid out for public purposes by the Crown; or
 - (ii) a road or street opened under the Roads Act 1991 or any other Act relating to the opening of new roads and streets; or
 - (iii) a road or street transferred or surrendered to the Minister of Local Government or the Crown by the owner or lessee for use as a public road or street; or
 - (iv) a road or street declared or dedicated under any other Act to be a public road or street, and includes part of a road;

Road process - means-

- (a) a road opening; or
- (b) a road closure; or
- (c) a combination of a road opening and a road closure;

Road process order - means an order made by a relevant authority for a road process pursuant to this Act, including, in relation to a road closure, any further order made as part of the order.

PRINCIPLES:

- 1.1 The sale and disposal or purchase of land will be the subject of a separate resolution of Council in every instance.

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WARNING

If using a printed copy of this document, be aware that whilst it was correct at the time of printing, it may have since been amended.

- 1.2 Each and every owner of land adjoining the land subject to a proposed road closure will be first invited to make an offer and the correspondence should also specify the amounts to be paid in advance to cover the cost of the process and advice that if the process is terminated at any stage the balance unspent will be returned.
- 1.3 Each and every owner of land adjoining the land will be encouraged to obtain independent advice for the purposes of making an offer.
- 1.4 Transparency and accountability in the sale and disposal and purchase procedures and practices will always be present to ensure that Council obtains the best outcome and that all potential purchasers are given an equal opportunity to purchase the land. The best price for the land will not be the only criteria on which Council will make its final decision.
- 1.5 Council will consider the available opportunities to enhance the local amenity, the environment, economic development and sustainable growth. In identifying the circumstances in which to apply these options the Council will consider a number of issues:
- the number of likely purchasers of the land;
 - the original intention for the use of the land when purchased, where relevant;
 - the current and possible preferred future use of the land;
 - the opportunity to promote local economic growth and development;
 - the total estimated value of the land;
 - compliance with statutory and other obligations;
 - the existence of potential local purchasers with an interest in the land, nearby owners or others possibly with a pre-existing interest in the land where negotiations may be appropriate.
- 1.6 Any agreement Council reaches with the proposed purchaser at the end of the invitation to make an offer process is subject to all of the processes in part 3 of the Roads (Opening and Closing) Act 1991. This must be noted in dealings with the proposed purchaser and in correspondence.
- 1.7 If an "in principle" agreement is not achieved with any adjoining land owner Council can consider the following alternatives:
- If no "in principle" agreement has been reached and Council considers the land can be sold separately from any other land, order that the land be sold by public auction or tender.
 - Order that the land be sold or transferred for use by a public charitable or beneficial community purpose.
 - If the land can be used by the Council for some other purpose, make an order that the land be retained by the Council and Certificate of Title be issued to the Council.
 - Order that the land, subject to the road closure be added to adjoining land that is dedicated under the Crown Lands Act 1929 or be transferred to properties adjoining, ie, alienated in fee simple in trust under the Crown Lands Act 1929 or be vested in the Crown.
 - If an order is made for road closure Council may as part of the order make an order for the granting of an easement over the land subject to a road closure and subject to the provisions of Section 18(2) of the Act.
- 1.8 Council must also consider those factors in reaching a determination of the road process order laid out in Section 16 of the Act, being:
- Any objections made by any person pursuant to the Act; and
 - The plans, principles, regulations and other matters to which regard must be had by assessment authorities for determining applications for development authorisation under the Development Act 1993 in relation to developments in the area to which the proposed road process order relates; and
 - Whether the land subject to the road process is reasonably required as a road for public use in view of the present and likely future needs in the area; and

- Alternative uses of the land subject to the road process that would benefit the public or a section of the public; and
- Any other matter that the Council considers relevant.

1.9 To assist in demonstrating that the sale and disposal processes are cost effective, fair, transparent and accountable and meet the community needs Council will document the reasons for entering into the agreement.

REFERENCES:

Corporate Plan:

Procedure References :

Other Related References :

Lands (Opening and Closing) Act 1991

Crown Lands Act 1929

Development Act 1993

Real Property Act 1886

Previous Versions: